



# Uniformity in Provincial Legislation

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ADDRESS delivered by  
**SIR JAMES AIKINS, K.B., K.C., M.P.**  
of Winnipeg, President of the Canadian Bar Association and  
President of the Manitoba Bar Association  
to the Members of the Canadian Credit  
Men's Trust Association Limited  
and invited guests

December 21st, 1914



Issued by the Press and Literature Committee,  
**THE CANADIAN CREDIT MEN'S TRUST ASSOCIATION LIMITED**  
605 Ashdown Block, Winnipeg, Man.



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## Uniformity in Provincial Legislation

As a very large percentage of the Canadian people are interested in property and carry on business in only one province, few Canadians know the difficulties encountered by those who carry on business in several provinces on account of the differences of the provincial laws. There are two classes who have occasion to know of such difficulties by both experience and observation: first, Canadian financial institutions, manufacturers and wholesale merchants or jobbers whose businesses are necessarily carried on throughout Canada irrespective of provincial limits; second, the legal profession, whose duty it is to know not only Federal but provincial law, and incidentally in a general way the differences between the laws of the several provinces.

The first class are actuated by ordinary commercial motives; the second class by the public spirit, the "noblesse oblige" which has generally characterized the high profession of the law. Not only has the legal profession in Canada knowledge of the difficulties occasioned by differences in provincial laws, but it has taken steps, as far as it lies in its power, to overcome the difficulties by promoting uniformity in provincial laws. Recently The Canadian Bar Association was formed; the expressed objects of the Association are:

"To advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout Canada so far as consistent with the preservation of the basic systems of law in the respective provinces, uphold the honor of the profession of law, and encourage cordial intercourse among the members of the Canadian Bar."

Last October the Council of the Association met in Toronto and appointed a Committee on Legislation with a view of making effective the purposes expressed in the Constitution of the Association.

You will, therefore, see that the Association, composed of lawyers from all provinces of Canada, actuated by the highest and best motives, have perhaps proceeded further than those of the first class who will receive material benefit from greater uniformity in the different laws of the several provinces.

Whether actuated by motives of material advantage, or the broader motive of public benefit, all interested should co-operate in

bringing about the desired result. That result cannot be attained without the concurrence of the several provincial governments and legislatures; they will not likely take the initiative, because it is very difficult for them to disassociate their ideas from what is local and provincial, and have the larger conception of what they can do for the interests of the whole of Canada, and they will have to be persuaded that the result aimed at is going to be of use to those within their jurisdiction.

The thought of attaining uniformity of laws in the several states or provinces of a federation is not an original one, nor can there be any reasonable doubt about its feasibility. About twenty-five years ago leading lawyers in the United States were impressed with the necessity of improving the conditions and lessening inconveniences occasioned by contradictory state laws, and took initial steps to remove those inconsistencies through the American Bar Association. The offspring of that effort is the Board of Commissioners on Uniform State Laws. It is composed of representatives appointed by the Governments of the respective States. Their duty is to make a study of the comparative laws of each State which may affect business beyond the boundaries of that State, and make recommendations. The Board meets regularly and has employed experts to collect information and to draft standard forms of acts relating to the several subjects on which uniformity is desired. The result has been that the Negotiable Instruments Act has been adopted by 46 States, territories and Federal districts and possessions; the Warehouse Receipts Act has been approved and has become the law of 30 States, territories and Federal districts and possessions; the Bills of Lading Act is now the law in 11 States, territories and Federal districts and possessions; the Sales of Goods Act in 11 States, territories, districts and possessions; the Certificates of Stock Act in 9 States, territories, districts and possessions; the Divorce Act in 3 States; the Family Desertion Act in 4 States, and the Probate of Foreign Wills Act in 9 States, territories, districts and possessions. These results have been set forth in the chronological order in which the various Acts have been approved by the Conference, and it will be seen that, in view of the time during which each of the Acts has been under consideration by the various legislatures, the approval and adoption of them has been steady and regular in proportion to the opportunity afforded.

They have not by any means finished their work yet. What they have done, however, is but an earnest of what they hope to do in standardizing the laws of the several States which affect inter-

States business and interests. What the United States has done Canada can do.

The lack of uniformity in the United States in a number of subjects is much greater than in Canada. This arises by virtue of the difference between the constitutions of the United States and Canada.

#### LEGISLATIVE JURISDICTIONS IN CANADA.

The jurisdiction of the Congress of the United States was carved out of the several State jurisdictions, the residuum of legislative power being left with the several States. It is the opposite in Canada—out of all the subjects upon which a Parliament can legislate, certain were allotted to our provincial legislatures and certain others to the Dominion, but the residuum of legislation was given to the Federal Parliament. Accordingly, in all the provinces in Canada the statute laws relating to crime, negotiable instruments, bills of lading, interest, legal tender, marriage and divorce (except marriage ceremony) are uniform, as they emanate from one source, the Federal, and apply to all localities.

Under the jurisdiction conferred by the British North America Act, all the provinces have legislated on the tenure, transfer, mortgaging and devolution of land, limitation of time for actions, taxation and licenses to do business, companies, foreign judgments, workmen's compensation, partnership, arbitration, with married women's right to trade and hold property, assignments and preferences by insolvent persons, sales of goods conditional and bulk sales and on bills of sale, and chattel mortgages.

May I refer a little more particularly to a few of these.

#### SECURITIES ON LANDS AND CHATTELS.

Each province has the jurisdiction to legislate, and has legislated, but differently from others, in respect of security on lands and chattels for debts or money borrowed, and has fixed forms and methods, procedures and times relating to the advance of the money, the verification of the debts, the registering or filing of the documents and, when after many perplexities, such securities are completed, then respecting realizing on them.

#### UNREASONABLE DIFFERENCES IN ACTS.

Some of the legislatures have been thoughtless of the fact that the unnecessary ceremonies and numerous forms, the impediments and obstructions which the trader or investor has to observe or overcome between the time the goods are sold or the money advanced



and when he expects to receive his own with fair profit, and which were apparently intended for the benefit of the customer, are really to his disadvantage. The annoyance and perplexity of the trader are greatly increased, and his expense also, by reason of those forms, ceremonies, impediments and obstructions differing in every Canadian province, not only on these, but kindred subjects of legislation. He is to grope his way through these wire entanglements, scarcely any two alike, before he makes a really successful or satisfactory business trip from one ocean to the other. Some legislators forget that the customer must have the goods and the enterprising borrower the money, and that the business goes into the channel where the dealer in goods or the investor of money will receive reasonable but certain return for his commodities or cash, that, if obstructions are placed in that channel, the dealer or lender will decline the desired trade or insure against legal perplexities, loss and delay by adding something to the interest on the money or to the cost of the goods, which the borrower or purchaser has to pay in the end. I have had occasion to look a little into this subject, and find that in our West the cost of goods and the interest on money are increased on account of delays in meeting paper or payments and of the difficulties put in the path of the creditor in recovering against the debtor, and by the uncertainties created by conflicting provincial Acts. Undoubtedly, the safer the security and the easier of realization, the greater will be the readiness of the vendor or investor to part with what he has to sell or lend.

The class of paternal legislation to which I have referred and which varies in the different provinces, though seemingly of benefit to the debtors in those provinces or localities, is too often delusive and detrimental to them. Men doing business in several provinces would not so much object to it but for the inconsistencies in the acts of the legislatures. The effort to obtain more uniform legislation will result in clarifying and improving the statutory law, and when attained will place the provinces on an equality in respect of those subjects and greatly facilitate the business and trade of Canada, and be to the advantage of the customer as well as the dealer or investor.

#### INSURANCE ACTS.

For similar and perhaps more obvious reasons, an effort should be made to secure standard provincial laws relating to fire insurance, and life insurance for the benefit of wives, children and parents. There are but few insurance companies which do not transact

business in more than one province, and yet these provinces have prescribed policy conditions which materially differ in respect of fire insurance. So also do the provisions which allow policies of insurance on lives in favor of relatives and to the exclusion of creditors.

My attention was called to-day to an article which appears in the last number of "Canadian Finance," a portion of which is as follows:

"...As mentioned a fortnight ago in these columns, the Insurance Superintendents of the four Western provinces agreed last summer to try to have uniform insurance enactments passed. More particularly was it the aim to have uniform statutory conditions for fire insurance policies.

"Saskatchewan incorporated the new conditions in revised legislation this fall, and Manitoba and British Columbia will take them up at their coming sessions—at which time, it is hoped, further consideration will be given to points relating to the mortgage clause and to recovery where additional insurance has not been disclosed to a company. But Alberta undertook not only to introduce numerous ridiculous changes in wording, but to introduce drastic changes without consulting any of the interests affected. Most revolutionary of all was the inclusion of the word 'tempest' in the lightning clause so as to make the policy contract call for making good 'the loss or damage caused by lightning or tempest, whether fire ensues therefrom or not.' From the underwriting viewpoint, this new policy condition meant that the companies were called upon to insure against any losses in Alberta from a disaster such as the Regina cyclone, as well as from everyday weather losses.

"Small wonder, therefore, that the underwriters considered themselves forced into a general increase of rates throughout Alberta.

"Also, as was strongly pointed out to the Alberta Government after the passing of the Act, confusion was worse confounded by the fact that almost all Dominion licensed companies have not the power to transact weather insurance. And the curtain was to be rung up on the new Act on January 1st next."

#### STATUTORY LIMITATIONS, EXEMPTIONS, TAXATION.

Those who have actual experience, or even considered the subject, will realize how confusing are the differing laws of the several provinces which relate to *limitations* of time for bringing action or taking proceedings to prevent rights from being barred,

or how important it is to creditors doing business in several provinces to know the distinctions between the laws of those provinces relating to *exemptions* from execution or seizure of debtor's property.

You also know how business men who are cautious are careful to have information about the *licenses* necessary and the fees to be paid in another province before starting new enterprises or undertakings there, and the *taxation* to which they may be subjected in respect of that enterprise, and how surprised and pained the incautious ones are, who assume the laws in the provinces to be the same or much alike, and who are summoned for illegally carrying on business without having taken out such a license, or who are called upon to pay taxes not taken into consideration before commencing business in that place.

#### COMPANIES.

A very large proportion of the manufacturing, mercantile and financial business of Canada is carried on by joint stock companies, incorporated under the laws of the provinces or the Dominion. As the geographical conditions of the several provinces are similar and the business carried on in those provinces is substantially the same, there appears to be no good reason why the statutory provisions relating to the incorporation and business of a company and its management, its powers and liabilities should not also be similar.

Yet we find the provisions of provincial laws relating to such companies differing very materially. Some require public notice to be given of the application for the charter; others omit that and simply provide for the filing of memorandum and articles of association, leaving it with the parties applying to define what powers and franchises they desire and the method of conducting their business. Some put a limitation on share capital; others none. Some impose upon directors liabilities to shareholders for negligence. Some are very particular about the form of prospectus and the sale of shares at full face value; some are lax and permit watering of stock. Some require specific information in returns to the government; others give freedom from publicity.

It will take too much time, however, to go further into details. The inconsistencies and contradictions in the provincial laws relating to such companies give the greatest opportunities for fraudulent contraptions and stock swindles. These differences in provincial Acts providing for the incorporation of companies are carefully studied by schemers and predatory promoters for the purpose of

ascertaining what jurisdiction gives to them the greatest ease and latitude and profit in obtaining charters, organizing companies and in disposing of shares of stock. There is in respect of the incorporation and organization of companies urgent need for uniformity of legislation.

The Chairman of the Conference of Commissioners in the United States mentions seven cardinal features which he deems indispensable in uniform corporation law: That the purpose of the corporation shall be single; that the maximum corporate stock shall be limited; that consolidation shall be carefully restricted; that stock watering shall be prohibited; that the managing board and officers shall be held to rigid accountability; that minority stockholders shall be afforded all proper protection, and that reliable information as to assets and liabilities shall be available to the public.

Owing to the recent decision in the John Deere Plow Co. case, it is very likely that the majority of companies hereafter will incorporate under the Dominion jurisdiction. It is, therefore, desirable that the Dominion Parliament should pass the very best possible act relating to the incorporation and organization of companies, and providing for their rights, duties and liabilities. Your attention no doubt has been called to the fact that our own Provincial Governments are likely to introduce a new act relating to the incorporation of companies. It might be wise to defer such introduction until ample opportunity is given to the Dominion and Provincial Governments to confer concerning a standard form of incorporation which will put all companies on an equal footing and be for the general advantage of the people.

#### JUDGMENTS OF PROVINCIAL COURTS.

Many students of the British North America Act, our Canadian constitution, think that it is defective in this: that it makes no certain provision for the judgments of the courts of one province having binding force in another, and holding that all courts and judges should be federal in respect of their orders and judgments. That might be one way of preventing the awkward, wearisome and expensive method prevailing now of having to sue in one province on the judgment of the court of another before a creditor is able to realize, or a successful litigant can obtain the fruit of a judgment. The problem can be solved in another way: by the provinces accepting as binding judgments and orders obtained from a court in another province after a fair trial and hearing between the parties

concerned. That can only be done by a concurrence of the provincial governments and the adoption of facilitating acts. How can they be persuaded? Can you do it?

#### WORKMEN'S COMPENSATION, WILLS, PARTNERSHIP, ARBITRATION, MARRIED WOMEN.

Most of you are not directly concerned in the differing workmen's compensation acts in force in the several provinces. The workmen of Canada, their orders and unions are, however. You can readily understand how important it is to them to have the provisions relating to that matter in the several provinces as uniform as possible.

The provincial statutes relating to the formalities necessary for valid *wills* are much the same in the English-speaking provinces, consequently there should not be much trouble in removing statutory inconsistencies. It is important that a will effective to pass property in one province may be valid for the same purpose in another. Unfortunately this is not so in respect of all the Provinces.

You may be more interested in the codification and standardizing of the acts relating to *partnership* and *arbitration*, but for our purposes to-night the mere mention of them will be sufficient.

If the statutes of a province express the views of its people, then the people of Canada radically differ about the right of *married women* to hold property, to engage in business and to incur debts for which she and her property will be liable.

#### SALES OF GOODS, ASSIGNMENTS.

Your Association and its members are directly interested in provincial laws relating to sales of goods, conditional and bulk sales, lien notes, bills of sale and chattel mortgages and assignments and preferences by insolvent persons. Sales of Goods Acts in the Western provinces are so nearly alike in their provisions that these legislatures should have no hesitation in adopting a standard act. The provincial statutes on the other subjects, where they exist, show material inconsistencies. Yet as trade methods and principles are the same everywhere throughout Canada, there seems to be no reason why these conflicting laws which affect not only provincial but interprovincial business should not be brought into harmony and working simplicity. This cannot, of course, be done without passing acts containing the law relating to those several subjects, or, in other words, codifying the law. Such codes have been adopted in several of the provinces.



Where none have been passed, the law, save in the Province of Quebec, is based upon the common law of England and the statutes passed by the British Parliament adopted by those provinces and by fragmentary provincial legislation amending the law from time to time.

#### CODES OF LAW.

There are among our lawyers and legislators some who object to a codification of the law relating to classes of subjects, because such codification does not always express the whole law relating to that subject with all its nice distinctions, and because codification cannot be made to provide for the many varying cases which may arise, and because codification may mean inflexibility, and in the application of the law there should be some elasticity.

It is a well known principle that every citizen is supposed to know the law, a great assumption you may say, for even the best read and practiced lawyers in Manitoba do not know the whole of the law which may have to be applied to all the happenings of human life. Man-made law is, however, only intended as a guide for ordinary conduct in human affairs. If all people were wise and educated and honest and kindly such a guide would be unnecessary. Unfortunately they are not. It, therefore, becomes important that fundamental legal principles for the guidance of the people should be expressed as clearly and simply as possible and that the law should be certain.

No system of written or statutory law can provide for all the unusual details or events in temporal affairs, nor should that impossibility be attempted. Unusual or extraordinary cases must be decided by the application of general legal principles and the use of common sense, that is to say, the sense which is common among the people generally, for in the ultimate on the decision and view of the people must rest the fundamentals of the law. Their standard ordinarily will be based on what is true.

#### ACTS SHOULD BE CAREFULLY DRAWN AND LAW CERTAIN.

To be guided by the law, the people should know at least those portions of it which concern them and their common business affairs. To enable them to know the principles of such law, it should be simply and clearly set forth, and, where it relates to business or affairs that are interprovincial, it should have general or national application. The boundaries of provinces, which after all are only imaginary or artificial lines, should not be allowed to interfere with the free working of principles which are in their nature universal.

The men of Canada whose business and interests extend into several provinces are, accordingly, demanding that the interference with those businesses and interests caused by divergent, conflicting or inconsistent statutory provisions should end or at least be mitigated.

They know that entire uniformity of provincial legislation is impossible; they know also that every step towards uniformity and a harmonizing of those statutory provisions is in the right direction and for the public benefit.

In respect of those subjects to which I am now referring, and in which you are so greatly interested, there may be two ways in which uniformity can be attained. The first is by the provinces adopting standard acts. There seems to be no substantial reason why they should not. By this course the provincial legislatures will continue to exercise their legislative functions on those subjects under the jurisdiction given them by the words of the British North America Act "property and civil rights." It is eminently desirable that the provinces should continue to have charge of these subjects, provided they so legislate that the duties, privileges and remedies may be fairly uniform in their application throughout Canada. For those rights, and obligations and remedies should be determined by the certainty and general uniformity of the law in Canada, and not by geographical boundaries.

Failing this, you may be obliged to have recourse to Dominion legislation under that jurisdiction conferred by the British North America Act, "The Regulation of Trade and Commerce," "Bankruptcy and Insolvency," or "The Peace, Order and Good Government of Canada."

In the recent decision of the Judicial Committee of the Privy Council in the case of the John Deere Plow Co., their Lordships say:

"The general power conferred on the Dominion by s. 91 (of the B. N. A. Act) to make laws for the peace, order and good government of Canada, extends in terms only to matters not coming within the classes of subjects assigned by the Act exclusively to the Legislatures of the Provinces. But if the subject matter falls within any of the heads of s. 92 (which gives the provinces jurisdiction), it becomes necessary to see whether it also falls within any of the enumerated heads of s. 91 (which gives the Dominion jurisdiction); for, if so, by the concluding words of that section it is excluded from the powers conferred by s. 92."

And further:

"Their Lordships find themselves in agreement with the interpretation put by the Judicial Committee in *Citizens' Insurance Company vs. Parsons* (7 A.C.) on head 2 of section 91 (which gives the Dominion powers), which confers exclusive power on the Dominion Parliament to make laws regulating trade. . This head must, like the expression 'Property and Civil Rights in the Province' in s. 92 (which gives the Provincial powers), receive a limited interpretation. But they think that the power to regulate trade and commerce at all events enables the Parliament of Canada to prescribe to what extent the powers of companies, the objects of which extend to the entire Dominion, should be exercisable, and what limitation should be placed on such powers."

And again:

"Lines of demarcation have to be drawn in construing the application of the sections to actual concrete cases, as to each of which individually the Courts have to determine on which side of a particular line the facts place them."

This being the view of the Privy Council, the question for consideration is: do the statutory regulations and forms required in the several provinces in respect of sales of goods and the like come within the general provisions of "Regulations of Trade and Commerce," which are distinctively assigned to the jurisdiction of the Dominion? Clearly, assignments, bankruptcy and insolvency do come under the jurisdiction of the Dominion under the words: "Bankruptcy and Insolvency."

If the Dominion Parliament asserted its right to so legislate on these subjects, it would mean greater centralization of legislative functions and would so not be agreeable to the provinces.

It is eminently desirable that Canada should be a united nation, not only politically, but in respect of interprovincial business transacted in it. The provinces, therefore, in respect of business transacted throughout Canada, should pull and work together, otherwise they will pull apart. Every inconsistent and conflicting piece of legislation enacted by the provinces and by the Dominion only tends to create confusion and entanglements which are disturbing both to the business men and to the lawyer, and create one of the most serious problems which arises out of the divided provincial and federal jurisdictions, a solution of which problem should enlist the best abilities of both lawyer and laymen who have the highest ideals in respect of Canadian development

The demand for greater uniformity and harmony in legislative enactments is becoming more insistent and firm. Toward satisfying that demand, the Canadian Bar Association offers its services and will be glad to receive from you assistance to effectuate an excellent and common purpose.

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At the termination of the address, it was moved by Mr. M. F. Christie, President of the Winnipeg Board of Trade, seconded by Mr. G. A. C. Weir, Manager of the Bank of British North America, that:

Whereas the financial and commercial interests of the different Provinces of Canada are closely bound together, and the variations now existing in the laws affecting the conduct of interprovincial trade are vexatious and costly and impose a heavy economic loss upon the nation:

Resolved, that this meeting of representative business men of the City of Winnipeg heartily supports the Canadian Bar Association in its efforts to unify the laws of the Provinces, and hereby requests boards of trade and other public bodies in Canada to memorialize the Governments of the different Provinces, praying:

1. That the representative governments co-operate with the governments of the other provinces to standardize laws affecting financial and commercial transactions.
2. That the respective governments each appoint a commissioner or commissioners for the purpose of conferring with such representatives from other provinces to obtain this result.
3. Or in the alternative, that the respective governments commission the Canadian Bar Association to report upon the subject, and that an appropriation be granted for that purpose.

Further resolved, that Sir James Aikins' speech be printed and the Canadian Credit Men's Trust Association be asked to forward copies of such speech and this resolution to the Canadian Bar Asso-

ciation, the principal Boards of Trade and other public bodies in each province.

The following gentlemen then spoke to the motion: W. S. Fallis, President Manitoba Branch, Canadian Manufacturers Association; Horace Chevrier, President Retail Merchants Association; R. T. Riley, President Loan and Mortgage Association; C. A. Richardson, President Insurance Association; H. T. Reid, Chartered Accountants' Association; I. Pitblado, Campbell, Pitblado & Co.; H. Annis, Marshall, Wells Co., and E. J. Harden of the Winnipeg Wholesale Implement Association.

The motion as presented was carried unanimously.